

FRANK GAMBLE
v.
ACTING DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 86-40-A

Decided February 5, 1987

Appeal from a decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) increasing the rent on lease No. 14-20-0511-5178, covering Yakima Allotment No. 306.

Reversed.

1. Bureau of Indian Affairs: Administrative Appeals: Leases--Indians:
Leases and Permits: Rental Rates

The role of the Board of Indian Appeals in reviewing a rental adjustment in a lease of Indian land is to determine whether the adjustment is reasonable, that is, whether it is supported by law and substantial evidence. If it is reasonable, the Board will not substitute its judgment for that of the Bureau of Indian Affairs, but the Board must overturn an adjustment that is not reasonable

2. Indians: Leases and Permits: Rental Rates

A rental adjustment which applies the percentage increase in fair annual rental between two lease periods to a negotiated rent which was nearly twice the amount of the fair annual rental at the time it was negotiated is not reasonable.

APPEARANCES: Frank Gamble, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Frank Gamble seeks review of a March 19, 1986, decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) (appellee) affirming a rental increase on lease No. 14-20-0511-5178, covering Yakima Allotment No. 306. For the reasons discussed below, the Board reverses that decision.

Background

The lease at issue is a business lease with an original 10-year term beginning January 1, 1969, and ending December 31, 1978. The leased property is an 80-acre Yakima allotment with multiple owners. It is located

2-1/2 miles south of Toppenish, Washington. The lease provides that the property is to be used for cattle feeding and wintering operations and hunting.

In the rental provision of the lease, appellant agrees to pay "upon approval \$2,000.00 rent and annually on or before December 1, preceding each lease year until ten (10) payments have been made."

Provision 7 of the lease reads:

The rental provisions in all leases which are granted for a term of more than five years and which are not based primarily on percentages of income produced by the land shall be subject to review and adjustment by the Secretary at not less than five-year intervals in accordance with the regulations in 25 CFR 131. [1/] Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by this contract or the contribution value of such improvements.

Provision 14.a gives appellant an option to extend the lease "for one additional term not to exceed 10 years * * * upon the same conditions and terms as in effect at the expiration of the original term."

A Bureau of Indian Affairs (BIA) appraisal report approved by the Chief Appraiser of the Portland Area Office on January 25, 1968, concluded that the highest and best use of the property was "irrigated and potential irrigated cropland, livestock grazing, winter feeding and calving area" and estimated that the fair annual rental as of January 3, 1968, was \$800 (1968 Appraisal Report at 3, 8).

In September 1968, appellant bid \$2,000 per year to use the property for cattle feeding, farming, grazing, and hunting. His bid was initially rejected because the bid advertisement had excluded feed lot operations from the permissible uses of the property. Following the rejection, some of the owners, including the Yakima Tribe, requested that appellant's bid be accepted, and BIA approved a lease to appellant on February 10, 1969.

The first rental review conducted pursuant to provision 7 of the lease was approved on September 18, 1972. It concluded that the existing rent of \$2,000 was greater than the rent that could be expected for any other likely use, that under the conditions of the lease it was fair and reasonable, and that it should therefore remain the same. Appellant's annual rent remained at \$2,000 through the second 5-year period.

By letter of June 8, 1978, appellant notified the Yakima Agency Superintendent, BIA (Superintendent), that he would exercise his option to extend the lease for an additional 10 years. By letter of October 10, 1978, the Superintendent advised appellant that his rent would be adjusted to \$4,350 per year beginning in 1979.

1/ Part 131 was redesignated Part 162 without substantial change by notice published at 47 FR 13327 (Mar. 30, 1982).

BIA arrived at this figure by comparing the \$800 estimate of fair annual rental in the 1968 appraisal report with a corresponding estimate of \$1,735 in a BIA appraisal report approved on October 31, 1977. In a September 29, 1978, rental review memorandum, the Area Chief Appraiser stated, "The best indicator of change in economic conditions affecting rental is by comparing the change in rental estimates for the two periods." He reasoned that, because the 1977 estimate of fair annual rental was 216.88 percent of the 1968 estimate, appellant's adjusted rent should be 216.88 percent of his initial rent of \$2,000 or, in rounded figures, \$4,350.

Appellant did not appeal this rental adjustment. Instead, after discussing the matter with BIA, he agreed to a new rent of \$3,000 per year.

BIA's rental review memorandum for the final 5-year period of the lease, approved on July 12, 1983, concluded, by the same reasoning used in the 1978 memorandum, that appellant's rent should be adjusted to \$3,870, or 129 percent of his existing rent of \$3,000, because the fair annual rental in 1983 was estimated to be \$2,236, or 129 percent of the 1977 estimate of \$1,735. The Superintendent notified appellant by letter of August 1, 1983, that his rent would be adjusted to \$3,870 beginning in 1984.

Appellant appealed to the Portland Area Director, BIA, who affirmed the rental adjustment in a decision dated October 28, 1983. Appellant then appealed to appellee, who affirmed the Area Director's decision on March 19, 1986.

Appellant's notice of appeal was received by the Board on June 3, 1986. Only appellant filed a brief on appeal.

Discussion and Conclusions

Appellant challenges BIA's methodology in calculating his rental adjustment, which he argues resulted in an unfair increase in his rent.

The only discussion of the methodology employed in adjusting appellant's rent which appears in the record is the one contained in the rental review memorandum approved on July 12, 1983:

A better indication [than one discussed earlier] of change in economic conditions affecting rental value is by comparing the change in rental estimates for the two periods, based upon rents received from similar type land. The rental report of November 1977 estimated the Fair Annual Rental of this property to be \$1,735. Current lease data indicates the present Fair Annual Rental to be \$2,236 or 129% of the 1977 estimate. Applying this rate of increase to the contract rent of \$3,000 results in an adjusted estimate of \$3,870.

[1] The Board's role in reviewing a rental adjustment is to determine whether the adjustment is reasonable, that is, whether it is supported by law and substantial evidence. If it is reasonable, the Board will not substitute its judgment for BIA's. However, the Board must overturn an adjustment

that is not reasonable. Kelly Oil Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 15 IBIA 5, 8 (1986); Bien Mur Indian Market Center v. Deputy Assistant Secretary--Indian Affairs (Operations), 14 IBIA 231, 235 (1986); Fort Berthold Land & Livestock Association v. Aberdeen Area Director, 8 IBIA 230, 246-47, 88 I.D. 315, 324 (1981).

[2] Had appellant's preadjustment rent been based on the fair annual rental for the property, it would be reasonable to employ the method used here to adjust appellant's rent to a new fair annual rental, assuming the new estimate of fair annual rental were based on substantial evidence. ^{2/} However, appellant's preadjustment rent was not based on fair annual rental but rather was arrived at through negotiation. It was nearly twice the amount of the fair annual rental at the time it went into effect and is \$764 higher than the estimate of fair annual rental for the current 5-year lease period. The adjusted rent of \$3,870, which appellant challenges, is \$1,634 higher than the fair annual rental for the current lease period. The record contains no substantial evidence supporting the application of the percentage increase in fair annual rental to appellant's negotiated rent. The Board finds therefore that the rental adjustment affirmed in appellee's March 19, 1986, decision is not reasonable.

Appellant stated in his notice of appeal to the Area Director that he wanted his present rent of \$3,000 to remain in effect for the remainder of the lease. He also stated that he had agreed in 1978 to a rent of \$3,000 on the understanding that it would not be increased during the 10 years remaining on the lease. Although there is disagreement between appellant and BIA over whether BIA gave appellant a commitment in 1978 not to increase his rent further, it is apparent that appellant was willing and agreed to pay \$3,000 for the remainder of the lease. It is reasonable therefore for appellant's rent to remain at \$3,000 for the final 5-year period of the lease even though that amount is higher than the fair annual rental of \$2,236 applicable to this lease period.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Deputy Assistant Secretary's March 19, 1986, decision is reversed. Appellant's rent is to remain at \$3,000 for the remainder of the lease term.

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Acting Chief Administrative Judge

^{2/} Although the record contains appraisal reports prepared in 1968 and 1977, there is no appraisal report or other documentation supporting the estimate of fair annual rental contained in the 1983 rental review memorandum.